

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Petition to Authorize Co-Primary)
Sharing of the 450 MHz Air-Ground)
Radiotelephone Service with BETRS)

RM-8158

To: The Commission

COMMENTS IN OPPOSITION TO PETITION FOR RULEMAKING

Mobile Telecommunication Technologies Corp. ("Mtel"), by its attorneys and pursuant to Commission Rule Sections 1.4 and 1.405, respectfully submits its comments in opposition to the above referenced Petition for Rulemaking ("Petition") filed November 9, 1992.^{1/} In support, the following is shown:^{2/}

1. Mtel is a licensed provider of air-ground radiotelephone service in the 450 MHz band at various locations in the United States. It thus has a direct and distinct interest in the subject of the Petition and in the continued vitality of the air-ground service.

2. Petitioners ask the Commission to institute a rulemaking proceeding looking to give Basic Exchange Telecommunications Radio Service ("BETRS") co-primary status with

^{1/} The Petition was jointly filed by the United States Telephone Association ("USTA"), National Telephone Cooperative Association ("NTCA"), Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO"), National Rural Telephone Association ("NRTA"), and the Rural Electrification Administration ("REA") (collectively "Petitioners").

^{2/} Pursuant to the Public Notice, Report No. 1923 (January 8, 1993), comments on the Petition are due February 8, 1993. Thus, these Comments are timely filed.

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the air-ground radiotelephone service in the 450 MHz band.^{3/} Mtel opposes Petitioners' request for several reasons. First, the request fails to adequately recognize the increasing demand for air-ground services and the adverse affect which granting co-primary status for BETRS would have on the ability of air-ground carriers to serve that increasing demand for air-ground service. Second, Petitioners have failed to demonstrate a sufficient demand for BETRS to justify the added frequency allocation. Third, Petitioners have not shown that BETRS carriers have made full and complete use of the existing adequate spectrum available to them. Fourth, Petitioners have failed to show that the co-primary operation will not result in unnecessary interference and degradation of air-ground service. Each of these reasons is addressed in more detail below.

I. Existing and future demand for air-ground service require full utilization of existing air-ground frequencies.

3. Air-ground radiotelephone service in the 450 MHz frequency range is a public radio service between a base station and airborne mobile stations, generally serving private or commercial non-carrier aircraft. In creating the air-ground service, the Commission established the goal of encouraging the provision of nationwide service utilizing the minimum amount of spectrum necessary. The Commission recognized that its allocation of 12 air-ground channels would permit nationwide

^{3/} See Petition at 1.

service if the channels were used in sufficiently separate geographic areas. See Air-Ground Service, 22 F.C.C.2d 716 (1969). However, the Commission subsequently determined that the steady increase in use of air-ground service and the demand for that service among airliner passengers warranted the provision of additional spectrum in the 800 MHz band to provide radiotelephone service to commercial air carrier passengers.^{4/} See Report and Order 5 FCC Rcd 3861 (1990) and Memorandum Opinion and Order of Reconsideration 6 FCC Rcd 4582 (1991). Indeed, the growth of air-ground traffic is readily evidenced by the huge demand for telephone service on both commercial airliners and non-carrier aircraft.^{5/} Mtel's experience as a major provider of air-ground service has shown a steady growth in the utilization of the 450 MHz band frequencies by its customers each year. And Mtel expects that demand to increase given the demands of business is requiring more travel among personnel, which in turn further increases dependency on such communications services as the air-ground service.

4. In this connection, the Commission may take official notice of its records which indicate that each time a new 450 MHz air-ground facility is allocated, there are multiple applicants

^{4/} Of course this additional spectrum failed to alleviate the heavy amount of radio traffic transmitted in the 450 MHz band to and from private, as opposed to airliner, aircraft.

^{5/} In fact, Petitioners readily admit the increase in demand for air-ground service. See Petition at 5.

for those frequencies. This, in and of itself, indicates that air-ground spectrum has not lain fallow, and that such spectrum should not be reassigned to another service. By its very nature, Petitioners' proposal to provide co-primary status between air-ground and BETRS would decrease the available spectrum for existing and future air-ground needs. Where the supply of frequencies is already tight for air-ground service, creating even greater scarcity can only harm the users of the air-ground service.

**II. Petitioners have not shown an adequate
need to invade the air-ground allocation.**

5. The Petition purports to discuss the benefits and the disadvantages of the various frequencies which have been allocated for the provision of BETRS.^{6/} However, one significant aspect which the Petitioners choose not to discuss is whether there is a substantially increasing demand for BETRS service that cannot be accommodated by existing allocations. This, in Mtel's view, is fatal to their request for more spectrum for the BETRS service, for to demand additional spectrum, they ought to be required to demonstrate that there are customers in rural areas that need and want BETRS and that available spectrum is not sufficient to provide the service.

6. Perhaps in an attempt to make some sort of showing of need, Petitioners attached as Appendix B to their Petition, a

^{6/} See Petition at 5.

single sheet purportedly listing "examples" of BETRS facilities in five large states which could not be constructed due to lack of available channels. However, that summary description simply cannot suffice to support a BETRS invasion of the air-ground frequencies. At the very least, Petitioner should present a bona fide need study projecting out the demand for several years for BETRS service and comparing that with available frequencies used in the most efficient manner.^{7/} The Petitioners present no explanation why they have not done this. In the absence of such a need showing, it would be contrary to the public interest to commence the requested rulemaking proceeding.^{8/}

**III. Petitioners have not shown that full use has
been made of existing sources of frequency for BETRS.**

7. Mtel does not dispute the rationale or the need for BETRS; however, Mtel does submit that the overall demand for

^{7/} In this connection, Mtel believes that the most efficient utilization of existing spectrum should be required prior to grant of any additional frequency to the BETRS service. Thus, any demand study which Petitioners might tender, ought to consider the efficiencies which would be realized through digitization of BETRS frequencies, as well as the effect of full implementation of cellular telephone service in the rural areas of the United States.

^{8/} Although the Petitioners insist there are hundreds of other instances similar to those listed in their Appendix B, they provide no specific showing to support their assertion. The Commission has considered and rejected similar requests to allocate more spectrum to BETRS. See Memorandum Opinion and Order on Reconsideration, 4 FCC Rcd 5017 (1989), where the Commission found that there was no basis to dedicate any further scarce radio spectrum to BETRS since there were a sufficient number of channels available to accommodate current demand.

BETRS has not grown to the extent to justify the allocation to BETRS of other heavily used spectrum, particularly in the 450 MHz band. The Commission has authorized co-primary access to both the 150 and 450 MHz bands in the Public Land Mobile Service, and also authorized co-primary access to 50 channels in the 800 MHz Private Radio Service Band for BETRS.^{9/} Although the Petition cites problems which it asserts preclude BETRS providers from using existing allocated bands, other options exist besides the expropriation of the 450 MHz air-ground band.

8. The Petitioners argue, for example, that rural cellular service is not a viable option for BETRS. The reasons given include the allegedly higher expenses involved in use of cellular and the alleged reluctance of cellular operators to provide such service. Significantly, no data is provided to support this argument, which in any event is counter-intuitive. To the extent cellular service is relatively expensive, it is so because of the cost of the capital equipment necessary to provide the service. BETRS start-up costs are also high, although there is a smaller rate base upon which to spread those costs than for cellular. Moreover, as rural cellular systems mature they will be looking for ways to enhance revenue. BETRS service is one option which could be utilized.^{10/} Thus, no rulemaking should be instituted

^{9/} See Report and Order, 3 FCC Rcd 214 (1988).

^{10/} The Petitioner's argue that fixed cellular service is not the same as BETRS. See Petition at 8. Yet, there is no
(continued...)

until adequately supported by a showing of the lack of feasible alternatives.

IV. Interference considerations require denial of the requested rulemaking proceeding.

9. Recognizing that the failure to demonstrate the absence of harmful interference to existing air-ground traffic would be fatal to their request, the Petition includes an interference analysis in an attempt to demonstrate that no harmful interference will occur if the 450 MHz band is shared on a co-primary basis between the air-ground and BETRS services. However, this analysis is predicated on the maintenance of a proper amount of separation between the two types of stations. Due to the very nature of air-ground communications, it may be difficult to maintain proper levels of separation because of the problems posed by moving aircraft. Due to the vast expanse of the country, aircraft spend the bulk of their time over rural areas in transit from one city to the next. Even if adequate separation is maintained between air-ground base stations and BETRS facilities, there is no way to control separation between aircraft themselves and BETRS facilities. Thus, the likely result of co-primary licensing of the two services in the 450 MHz band is destructive interference to both services. Indeed, interference is a principal problem plaguing existing air-ground

^{10/}(...continued)

showing made that fixed cellular service cannot operate as BETRS. Indeed, the rules specifically contemplate such service. See Section 22.308.

communications today. Adding BETRS stations to the frequencies will only intensify that problem.^{11/}

V. Conclusion.

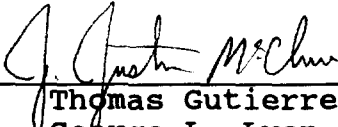
10. The public today enjoys great benefits from the air-ground service. It is one of the ways in which our modern society allows virtually instantaneous communications between one another. To allow BETRS to interfere with and cause the degradation of such a valuable service when other options are available would disserve the Commission's goals of providing ubiquitous communication service to the public. In view of the above, Mtel opposes Petitioners' efforts to institute co-primary sharing of the 450 MHz band between the air-ground service and

^{11/} Moreover, if a BETRS station were allowed to be constructed with the separation suggested by the Petitioners, air-ground service providers would likely be precluded from building new sites for enhanced coverage due to the need to protect BETRS facilities from interference.

the BETRS service. It therefore urges the Commission to deny the instant Petition for Rulemaking.

Respectfully submitted,

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February 8, 1993

CERTIFICATE OF SERVICE

I, Catherine M. Seymour, a secretary in the law firm of Lukas, McGowan, Nace & Gutierrez, Chartered, do hereby certify that I have on this 8th day of February, 1993, sent by first class U.S. mail copies of the foregoing "STATEMENT OF OPPOSITION TO PETITION FOR PROPOSED RULEMAKING" to the following:

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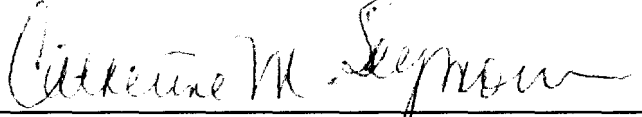
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